

REMARKS/ARGUMENTS

The Office is requiring electing one of the following species:

**Species A(1):** directed to a transparent sealant formed of a flexible polymer composition comprising a diene-based polymer, said diene-based polymer is a hydrogenated product of a conjugated diene-based block polymer comprising: one butadiene polymer block (I) with a vinyl bond in an amount of less than 25%, and a polymer block (II) of a conjugated diene unit and other monomer in a ratio of 50:50 to 100:0 and having a vinyl bond in an amount from 25 to 95%.

**Species A(2):** directed to a transparent sealant formed of a flexible polymer composition comprising a diene-based polymer, said diene-based polymer is a hydrogenated product of a conjugated diene-based block polymer comprising: at least one block polymer of a conjugated diene unit and an aromatic vinyl compound in a mass ratio of 99:1 to 50:50, and having a vinyl bond in an amount from 65 to 95% and hydrogenated.

**Species B:** directed to a transparent sealant formed of a flexible polymer composition comprising an olefin-based polymer.

Applicants provisionally elect with traverse, for examination purposes only, the following subspecies (at least Claims 1-7 and 10-11 readable thereon):

**Species A(1):** directed to a transparent sealant formed of a flexible polymer composition comprising a diene-based polymer, said diene-based polymer is a hydrogenated product of a conjugated diene-based block polymer comprising: one butadiene polymer block (I) with a vinyl bond in an amount of less than 25%, and a polymer block (II) of a conjugated diene unit and other monomer in a ratio of 50:50 to 100:0 and having a vinyl bond in an amount from 25 to 95%.

Applicants traverse this requirement on the basis that the Office has not considered the guidelines under MPEP §806.04(b), §806.05(j) and §809.02(a) in making this requirement.

MPEP § 806.04(b) states: “Species may be either independent or related under the particular disclosure. Where species under a claimed genus are not connected in any of design, operation, or effect under the disclosure, the species are independent inventions. See MPEP §802.01 and §806.06. Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions

such as those in MPEP §806.05 - §806.05(j). If restriction is improper under either practice, it should not be required.” (emphasis added)

MPEP §806.05(j) states that related product inventions are distinct if:

“(A) the inventions *as claimed* do not overlap in scope, i.e., are mutually exclusive;

(B) the inventions *as claimed* are not obvious variants; and

(C) the inventions *as claimed* are either not capable of use together or can have a materially different design, mode of operation, function, or effect.”

Applicants respectfully submit that the Office has not demonstrated any of the indications of distinctness (A), (B) or (C) listed in MPEP §806.05(j).

MPEP §809.02(a) states that the Examiner should “provide reasons why the species are independent or distinct”. This has not been done.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, L.L.P.



Richard L. Treanor  
Registration No. 36,379

Customer Number

**22850**

Tel. (703) 413-3000  
Fax. (703) 413-2220  
(OSMMN 07/09)

Soonwuk Cheong, Ph.D.  
Registration No. 62,793